IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Second Appeal No. 131/2005

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A.P. Lavande,J**
DATE : 20th October, 2006

Heard Mr. Khapre, learned counsel for the appellant.

2. By this appeal, the appellant takes exception to the Judgment and decree dated 15.10.2004 passed by the First Ad hoc Additional District Judge, Gondia in Regular Civil Appeal No. 49/01 dismissing the appeal filed by the appellant/ defendant against the Judgment and decree dated 29.9.1997 passed by the Civil Judge, Senior Division, Gondia in Special Civil Suit No. 80/94 decreeing the suit filed by the respondent/ plaintiff.

3. The plaintiff filed the above suit against the defendant for recovery of arrears in respect of electricity bills for consuming electricity from Meter IP/333 which was issued in the name of the defendant in January 1989. Since the defendant did not pay electricity bills which became due the electric supply of the defendant was disconnected by the plaintiff in the year 1991. However,

on 23.3.1992 when the plaintiff conducted a raid in the premises in which the said meter was installed they found that the defendant had illegally procured the electric supply by extracting one phase from the meter cut out and bringing other phase directly from the service line and had consumed extra power of 1,02,848 units. It was further the case of the plaintiff that the defendant had further extended the power supply to one Govind Dhirwani who was running Poha Mill nearby.

4. The suit was contested by the defendant. According to the defendant he had transferred the suit premises by sale-deed executed in the year 1990 along with the meter and, therefore, he had no control over the use of the said meter. It was further his case that in the year 1990 itself he had informed the plaintiff about the transfer by sending letter under the certificate of posting. The trial court after appreciating the evidence, oral and documentary, held that the defendant had illegally extracted electric energy and extended supply to service connection of one Govind Dhirvani for his Poha Mill. Consequently, the trial court decreed the suit in the sum of Rs. 1,05,125/- along with the interest @ 18% on the principal amount of Rs. 72,625.20 from the date of the suit till full realisation of the decreetal amount. The trial court held that the deed produced by the defendant to prove the transfer of the structure in favour of Govind

Dhirvani was not admissible in evidence for want of registration under section 17 of the Indian Registration Act since the consideration for the transfer of property was Rs. 5000/-. The trial Court further held that the defendant had not proved that the plaintiff was informed about the transfer as required under conditions 26 of the Maharashtra State Electricity Board Conditions and Misc. Charges of Supply of electrical energy. Consequently, the trial court held that the defendant was liable to pay the charges in respect of the electricity which was illegally supplied to Govind Dhirwani. The trial Court also rejected the contention that Govind Dharwani was a necessary party to the suit. The appellate court concurred with the findings given by the lower Court. However, the lower appellate Court reduced the interest awarded from 18% to 9% p. a..

5. Mr. Khapre, learned counsel appearing for the appellant submitted that both the courts below have erred in holding that the deed of transfer required registration inasmuch as by the said deed only material by which temporary structure was constructed was transferred to Govind Dhirwani and as such both the courts went wrong in holding that there was a transfer of immovable property by the said deed and as such the deed was required to be registered compulsorily under section 17 of the Indian Registration Act. He further submitted that since the

plaintiff had asked to discontinue supply to the premises of the defendant by certificate of posting there was no liability could have been fastened upon the defendant as done by both the courts. It is the further case of Mr. Khapre that if at all any person was responsible for payment of charges for illegal consumption of electricity it was only Govind Dhirwani and not the defendant.
He further submitted that he further submitted that Govind Dhirvani was a necessary party to the suit and, therefore, suit ought to have been dismissed by the trial Court.

6. I have considered the submissions made by the learned counsel for the appellant. I also perused the Judgments passed by both the courts below. In so far as the sale-deed regarding the structure belonging to the defendant Govind Dhirwani is concerned I find myself unable to accept the submissions of Mr. Khapre that it did not pertain to immovable property and, therefore, it was not required to be compulsorily registered. The evidence on record clearly suggests that it was not a temporary structure as contended by Mr. Khapre but it was a structure which squarely comes within the definition of immovable property. Therefore, both the courts below were right in holding that the sale-deed could not be relied upon in the absence of registration. In so far as the intimation given by the defendant to the plaintiff to discontinue supply to the premises is concerned, both the

courts below were right in holding that the same did not comply with the conditions 26 of the M. S. E. B. Condition & Misc. of supply and Electricity Energy which requires registered A/D notice to be given. Therefore, I do not find any merit in the said submission. So long as the meter stood in the name of the defendant it was the responsibility of the defendant to see that his meter was not misused for illegal supply of electricity to some other person. In so far as the argument of Mr. Khapre that if at any person is responsible, it was Mr. Govind Dhirwani is concerned it is difficult to accept the same since the meter stood in the name of the defendant the defendant was liable for any illegal supply made from his meter. Merely because Govind Dhirwani was liable for criminal action the same cannot absolve the defendant from civil liability to the plaintiff. I also do not find any substance in the submission of Mr. Khapre that Govind Dhirwani was a necessary party to the suit for the reasons stated above.

7. Upon perusal of the Judgments passed by the courts below I find that the findings given by both the courts below are borne out from the evidence on record and, therefore, cannot be said to be perverse warranting interference in second appeal. There are concurrent findings of fact. In any case, no substantial question of law is involved in the appeal. Hence, the appeal is summarily rejected.

C.A. No. 1548/2005:

In view of the dismissal of the appeal, this application has become infructuous. Hence, the application is dismissed as infructuous.

Judge

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